IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO/373/2025

BISWAJIT ROY BIR
VS
UNION OF INDIA & ORS.

For the petitioner	:	Mr. Saurabh Bagaria, Adv. Ms. Arijita Ghosh, Adv. Ms. Samrita Das, Adv.
For the respondents	:	Mr. Kaushik Dey, Adv. Mr. Tapan Bhanja, Adv.
Heard on	:	07.08.2025
Judgment on	**:**	**7th August, 2025**.

RAJA BASU CHOWDHURY, J (ORAL):

1. The petitioner seeks to challenge the seizure notice dated 5th October, 2025 whereby the consignment of betel nuts which the customs department claimed to be of foreign origin had been seized. The petitioner's case proceeds on the premise that the petitioner is engaged in the business of Trading of betel/areca nuts, procured from farmers and registered suppliers. The same is run under the name and style of Biswajit Traders. The petitioner has requisite licence for running such business. In usual course, the petitioner received orders for supply of 17,780 kilograms of betel/areca nuts from one M/s. Poddar Agro, a firm carrying on business at New Delhi.

2. Consequent thereupon, the petitioner with the object of supplying the betel/areca nuts had loaded the same from a godown under the supervision of the godown in-charge and after the loading was complete, the vehicle with the

consignment of areca nuts under valid e-way bills commenced its journey from Kolkata to the consignee's address at New Delhi.

3. The vehicle along with the consignment was intercepted at Chikanpara near Chikanpara Primary School on Gaighata-Thakurnagar Road, North 24 Parganas by the respondent no.5, who is an Inspector of Customs, Preventive and Intelligence Branch on 5th April, 2025. According to the petitioner, the aforesaid consignment was intercepted notwithstanding the driver producing all relevant documents, *inter alia*, including the invoice and e-way bill. On the same day, the goods were seized and a seizure memo was made over to the petitioner's representative/driver i.e. on 5th April, 2025.

4. Mr. Bagaria, learned Advocate appearing in support of the writ petition would submit that from a perusal of the seizure memo, it would transpire that no case for seizure has been made out. According to him, for the respondent no.5 to effect the seizure, specific terms have been provided and specified in section 110 of the Customs Act, 1962 (hereinafter referred to as the "said Act"). The primary condition being that the officer has to form an opinion/have reasons to believe that the goods are liable for confiscation. By placing before this Court the seizure memo, he would submit that from a perusal of the seizure memo, it would transpire that the grounds on which the goods have been seized is based on the alleged claim that the goods have been smuggled and they are betel nuts of foreign origin. According to Mr. Bagaria, since the petitioner is a trader and the goods were underway for supply from Kolkata to Delhi, the aforesaid allegation made by the respondent no.5 is entirely unfounded and has no basis. Mr. Bagaria would still further submit by drawing attention of this Court to the seizure memo that the ground for seizure of the goods being the goods liable for confiscation under Sections 111(b), 111(d) and 121 of the said Act, though Sections 111(b), 111(d) and Section 121 are mutually incongruous. By placing

before this Court the provisions of Sections 111(b) and 111(d) and 121, he would submit that if the provisions of Sections 111(b) and 111(d) are invoked, Section 121 has no application. He has also placed before this Court the definition of imported goods and would submit that in the facts of this case, the above seizure memo would not make out a case for the authorities to seize the petitioner's goods. He would submit that he has not approached this court to challenge the sufficiency of the reasons to believe, but the attack is directed against the very formation of opinion of the concerned officer to invoke Section 110 of the said Act. In support of his contention that it is imperative for the competent authority prior to effecting seizure to record and express his opinion on his reasons to believe that the goods are liable for confiscation, he has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Patna in the case of ***Om Sai Trading Company v. Union of India***, reported in **2020 (372) E.L.T. 542 (Pat.)**. On the above ground he seeks interference.

5. *Per contra*, Mr. Dey, learned Advocate appearing for the customs authority has taken me through the pleadings of the case and has submitted that if the statements of the petitioner are to be accepted, there was no reason for the vehicle to travel to Chikanpara where the goods were intercepted. According to him, the place where the goods had been intercepted is close to the Indo-Bangladesh border. By placing the statement of the driver of the vehicle, he submits that the driver of the vehicle has himself stated that goods in question had been procured from Chikanpara market. The respondent no.5 had sufficient reasons to believe that the goods have been procured in violation of Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 since, the importation of areca nuts is not permitted in India. The goods had been smuggled and, as such, Sections 111(b) and 111(d) are attracted which makes the goods liable for confiscation. On such ground the seizure was effective. He

would submit that the question whether seizure under Section 110 of the said Act was under a reasonable belief or not though justiciable, however, there is no scope for this Court to enter into the sufficiency of the materials as the same is not open for judicial review. In support of his contention, he has relied on the judgment delivered by the Hon'ble Supreme Court in the case of ***State of Gujarat v. Shri Mohanlal Jitamalji Porwal and Anr.***, reported in **1987 (29) E.L.T. 483 (S.C.)** and the judgment delivered by the Division Bench of this Court in the case of ***Tirupati Trading Corporation v. Collector of Customs***, reported in **1998 (104) E.L.T. 618 (Cal)**. He would also submitted that despite repeated summons being issued, the petitioner has not responded and has not been cooperating in the investigation and on such ground as well the writ petition should be dismissed. No interference is called for.

6. Having heard the learned Advocates appearing for the respective parties and having considered the materials of the record, I find that in the instant case, the petitioner claims to be a trader and in usual course had contracted to, and had accordingly taken steps for delivery of betel/areca nuts from his godown at Kolkata to the consignee at New Delhi. I, however, notice that the goods in question admittedly had been intercepted at Chikanpara and the geographical location in the form of coordinates made available and as admitted by the parties would show that the proximity of the place of interception was near Indo-Bangladesh border and is not on the Kolkata-Delhi highway rather far away therefrom. No explanation has been forthcoming as to why the petitioner's vehicle would take such a detour to reach the consignee's place notwithstanding the tax invoice and e-way bill providing otherwise. From the disclosure made by Mr. Dey in Court, it is apparent that the driver of the vehicle has made a statement that the seized goods were purchased from Chikanpara bazar. The aforesaid coupled with the unexplained detour of the petitioner's vehicle and the failure on the part

of the petitioner to respond to the summons would only support the formation of opinion as recorded by the respondent no.5 that the goods are areca nuts of foreign origin and are liable to confiscation, though the test reports are yet to arrive. It is true that under Section 121 of the said Act, goods cannot be seized as the language of Section 121 pertains to confiscation of the sale proceeds and not the goods. Be that as it may, a minor mistake or an incorrect invocation of particular section, in the seizure memo in my view, cannot set at naught the finding rendered by the respondent no.5 as regards his formation of opinion. Though Mr. Bagaria by placing the judgment delivered in the case of ***Om Sai Trading*** *(supra)* has sought to make out a case that the seizure memo does not disclose the reasons to belief, I am unable to accept the same. In the said judgment, it has been categorically noted that sufficiency of reasons to belief cannot be investigated. I also note that this Hon'ble Court in the case of ***Tirupati Trading Corporation*** *(supra*) specifically observed that though the question as to whether the seizure under Section 110 of the said Act was under a reasonable belief is justiciable, the sufficiency of the materials cannot be subject matter of judicial review. As to whether the goods would be ultimately confiscated or whether the respondent would succeed is not for this Court to decide at this stage.

7. In the instant case, the goods were seized on 5th April, 2025 and the writ petition has been filed on 17th May, 2025. Although, the petitioner approached this Court attempting to make out a case that the officers had been demanding illegal gratification, I, however, find that such complaints have been made only after three consecutive summons had been served on the petitioner. The petitioner has chosen not to respond to any of the summons. Without going into the aforesaid issue of illegal gratification as raised by the petitioner, I am of the view, in the facts of this case when investigation is in progress and material evidence to

support the formation of opinion are available though Mr. Bagaria would submit that the drivers statement was never furnished to the petitioner, at this stage, no interference is called for.

8. Accordingly, the writ petition is dismissed.
9. There shall be no order as to costs.
10. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(RAJA BASU CHOWDHURY, J.)

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